

Adopted by House 4-12-2013

SB146 HFIN AM 4-10

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1 The Committee on Finance moves to amend the bill on page two,
2 following the enacting section, by striking out the remainder of
3 the bill and inserting in lieu thereof the following:

4 **"ARTICLE 3. COSTS, FINES AND RECORDS.**

5 **§50-3-2c. Withholding from personal income tax refunds for unpaid**
6 **fines and costs in magistrate criminal actions, in**
7 **magistrate criminal appeals to circuit court and for**
8 **failure to appear in court.**

9 (a) If costs, fines, fees, forfeitures, restitution or
10 penalties imposed by the magistrate court upon conviction of a
11 person for a criminal offense as defined by this code, imposed by
12 the circuit court upon judgment on an appeal to circuit court of
13 that conviction, or imposed by either court for failure to appear
14 are not paid in full within one year of the judgment, the
15 magistrate court clerk or, upon a judgment rendered on appeal, the
16 circuit clerk shall notify the Tax Commissioner that the defendant
17 has failed to pay the costs, fines, forfeitures or penalties
18 assessed by the court. The notice provided by the magistrate clerk
19 or the circuit clerk to the Tax Commissioner must include the
20 defendant's Social Security number. The Tax Commissioner, or his
21 or her designee, shall withhold from any personal income tax refund
22 due and owing to a defendant the costs, fines, fees, forfeitures,
23 restitution or penalties due, the Tax Commissioner's administration
24 fee for the withholding and any and all fees or other amounts that
25 the magistrate court and the circuit court would have collected had

1 the defendant appeared: *Provided*, That no withholding shall be
2 made under this section if there is an unsatisfied withholding
3 request made pursuant to section two-b, article ten, chapter eight
4 of this code. The Tax Commissioner's administration fee shall not
5 exceed \$25, unless this maximum amount is increased by legislative
6 rule promulgated in accordance with article three, chapter twenty-
7 nine-a of this code. The administrative fees deducted shall be
8 deposited in the special revolving fund hereby created in the State
9 Treasury, which shall be designated as the Magistrate Fines and
10 Fees Collection Fund, and the Tax Commissioner shall make such
11 expenditures from the fund as he or she deems appropriate for the
12 administration of this subsection.

13 (b)(1) After deduction of the Tax Commissioner's
14 administration fee, the Tax Commissioner shall remit all remaining
15 amounts withheld pursuant to this section to the clerk of the court
16 that notified the Tax Commissioner of the failure to pay under
17 subsection (a) of this section.

18 (2) From the amounts received from the Tax Commissioner, the
19 circuit clerk shall distribute the portion thereof that is
20 attributable to costs, fines, fees, forfeitures, restitution or
21 penalties owed to magistrate court to the magistrate clerk and
22 distribute the remainder that is attributable to costs, fines,
23 fees, forfeitures, restitution or penalties owed to circuit court
24 to the appropriate fund or payee, as applicable and listed in
25 section twenty-eight-a, article one, chapter fifty-nine of this
26 code and as otherwise required by law.

27 (3) From the amounts received from the Tax Commissioner, or
28 from the circuit clerk under subdivision (2) of this subsection,

1 the magistrate clerk shall distribute applicable costs, fines,
2 fees, forfeitures, restitution or penalties owed to the appropriate
3 fund or payee, as applicable and listed in subsection (g), section
4 two-a of this article and as otherwise required by law.

5 (4) After the costs, fines, fees, forfeitures, restitution or
6 penalties are withheld, the Tax Commissioner shall refund any
7 remaining balance due the defendant.

8 (5) If the refund is not sufficient to cover all the costs,
9 fines, fees, forfeitures, restitution or penalties to be withheld
10 pursuant to this section, the Tax Commissioner's administration fee
11 shall be retained by the Tax Commissioner and the remaining money
12 withheld shall be remitted by the Tax Commissioner to the
13 appropriate clerk. The clerk shall then allocate the money so
14 remitted on a pro rata basis as provided in the applicable
15 provisions of subdivisions (2) or (3) of this subsection.

16 (c) In the event the costs, fines, fees, forfeitures,
17 restitution or penalties exceed the defendant's income tax refund,
18 the Tax Commissioner shall withhold the remaining balance in
19 subsequent years until such time as the costs, fines, fees,
20 forfeitures, restitution or penalties owed are paid in full. The
21 Tax Commissioner shall remit the moneys that he or she collects to
22 the appropriate clerk no later than July 1 of each year. If the
23 circuit court or the magistrate court subsequently determines that
24 any costs, fines, fees, forfeitures, restitution or penalties were
25 erroneously imposed, the clerk of the court shall promptly notify
26 the Tax Commissioner. If the amounts due are paid in full to the
27 court from a source other than the Tax Commissioner after the clerk
28 of the court has provided notice of the failure to pay to the tax

1 commissioner, the clerk of the court shall promptly notify the Tax
2 Commissioner of the payment. If the refunds have not been withheld
3 and remitted, the Tax Commissioner may not withhold and remit
4 payment to the appropriate court and shall so inform the clerk of
5 the court. If the refunds have already been withheld and remitted
6 to the court, the Tax Commissioner shall so inform the clerk of the
7 court. In either event, all refunds for erroneously imposed costs,
8 fines, forfeitures or penalties shall be made by the appropriate
9 court and not by the Tax Commissioner.

10 (d) *Rules.* - The Tax Commissioner may propose for legislative
11 approval such rules as may be useful or necessary to carry out the
12 purpose of this section and to implement the intent of the
13 Legislature. Rules shall be promulgated in accordance with article
14 three, chapter twenty-nine-a of this code."

Adopted

Rejected